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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/877,794	06/08/2001	Suzanne A. W. Fuqua	UTSK:348US/MBW	5270

7590 05/04/2004

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EXAMINER

UNGAR, SUSAN NMN

ART UNIT	PAPER NUMBER
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1642

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Art Unit: 1642

1. The Amendment filed February 24, 2004 in response to the Office Action mailed October 14, 2003 is acknowledged and has been entered. Previously pending claim 1, has been amended. Claims 1, 3 and 4 are currently under prosecution.
2. The claims are directed to a method for detecting tamoxifen-resistant breast cancer cells comprising contacting a sample containing tamoxifen-resistant breast cancer cells with an antibody that binds to a polypeptide selected from a markush group and measuring an amount of at least one of the above polypeptides in said sample which differs at least in objectives, method steps, response variables, and criteria for success from the method originally presented in the the instant application which is directed to a method for detecting tamoxifen-resistant breast cancer cells comprising contacting a sample containing tamoxifen-resistant breast cancer cells with an antibody that binds to a polypeptide selected from a markush group and measuring the amount of said polypeptide present in said sample. It is noted, for Applicant's convenience, that the courts have found, in *Abbott Labs. v. Baxter Pharm. Prods., Inc.*, No. 02-1400 (Fed. Cir. July 3, 2003) that a Markush group which recites the singular article "a" or "an" with the properly closed language of "consisting of", in the absence of expressly indicating multiple members of the group, is closed language which carries the meaning of only one member. The claims as originally filed recite in particular

"contacting said sample with **an** antibody that specifically binds to a polypeptide selected from the group consisting of" (emphasis added).

Art Unit: 1642

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1, 3-4 are withdrawn from consideration as being directed to a non-elected invention. See 37 C.F.R. § 1.142(b) and M.P.E.P. § 821.03.

3. The amendment filed February 24, 2004 amending all of the claims to an invention not originally presented is nonresponsive (see MPEP 821.03). The remaining claims are not readable on the originally presented invention for the reasons set forth above. Applicant is given a ONE MONTH time limit or until the expiration of the response period set in the last Office action, whichever is longer, to complete the response. NO EXTENSION OF THIS TIME LIMIT WILL BE GRANTED UNDER EITHER 37 CAR 1.136(a) OR (b) but the period for response set in the last office action may be extended up to a maximum of SIX MONTHS.

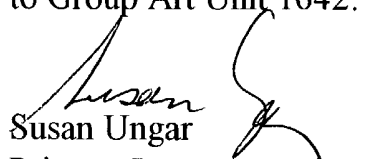
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Ungar, PhD whose telephone number is (571) 272-0837. The examiner can normally be reached on Monday through Friday from 7:30am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler, can be reached at (571) 272-0871. The fax phone number for this Art Unit is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Art Unit: 1642

Effective, February 7, 1998, the Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1642.



Susan Ungar
Primary Patent Examiner
April 20, 2004